

CARL J. ORESKOVICH, WSBA #12779
ETTER, McMAHON, LAMBERSON
VAN WERT & ORESKOVICH, P.C.
618 West Riverside Avenue, Suite 210
Spokane, WA 99201
(509)747-9100
(509)623-1439 Fax
Email: carl@ettermcmahon.com

Attorney for Defendant Cody Allen Easterday

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CODY ALLEN EASTERDAY,

Defendant.

No. 4:21-CR-06012-SAB-1

**DEFENDANT'S RESPONSE TO
TYSON'S OBJECTION TO
MOTION TO CONTINUE
SENTENCING HEARING AND
ASSOCIATED DEADLINES**

Cody Easterday, by and through his undersigned counsel, responds to the Objection to the Motion to Continue Sentencing Hearing and Associated Deadlines (the "Tyson Objection") filed by Tyson Fresh Meats, Inc. ("Tyson"). As more fully set forth below, the Tyson Objection contains numerous misleading statements and mischaracterizes the current status of the ongoing bankruptcies of Easterday Ranches ("Ranches") and Easterday Farms

1 (“Farms”).

2
3 **A. Cody Easterday has at all Times Cooperated in the Sale of the**
4 **Real and Personal Property Assets of Farms and Ranches.**

5
6 Tyson’s statement that Cody Easterday is “actively working to hinder”
7
8 creditors is factually incorrect and unsupported by the record. Nothing could be
9
10 further from the truth. Cody Easterday has at all times cooperated throughout
11
12 the bankruptcy proceedings and assisted with the sale of estate assets. He and
13
14 his wife, Debby Easterday¹, along with Cody’s mother, Karen Easterday², have
15
16 cooperated and assisted with the liquidation of assets having an estimated
17
18 aggregate value of over **\$358 million**. These assets were sold in less than a
19
20 year due in large part to the cooperation and efforts of Cody Easterday and the
21
22 Easterday family. Among other things, the Easterdays facilitated and actively
23
24 participated in the orderly and expeditious liquidation of the following assets
25
26 for the benefit of all creditors:
27

28 ¹ Debby Easterday is the wife of Cody Easterday and a co-owner of certain assets including the real
29 property assets that have been sold. Debby Easterday is not personally liable or responsible for any
30 wrongful acts committed by her husband, Cody Easterday, and is not liable or responsible for any claims
31 asserted by Tyson. Debby Easterday reserves all rights and claims.

32 ² Karen Easterday is the mother of Cody Easterday and a co-owner of certain assets, including the real
property assets in Benton County, Washington that have been sold. Karen Easterday is not personally
liable or responsible for any wrongful acts committed by Cody Easterday and is not liable or responsible
for any claims asserted by Tyson. Karen Easterday reserves all rights and claims.

- 1 • The real property assets of the bankrupt estates were sold as
- 2 part of a sale that closed on about August 2, 2021, which sale
- 3 generated sums in excess of \$204 million.
- 4
- 5 • The personal property assets of the bankruptcy estates,
- 6 including the equipment have been sold and have generated
- 7 sums of approximately \$14 million.
- 8
- 9 • The 79,000 head of cattle that were on feed as of December, 2,
- 10 2020, had an estimated value of approximately \$100 million as
- 11 of that date. Those cattle were all subsequently fed, cared for,
- 12 and shipped and delivered per Tyson's instructions between
- 13 December and June 30, 2021.
- 14
- 15 • The 2020 and 2021 crops have been harvested and the crops
- 16 and crop inventories have been marketed and sold generating an
- 17 estimated \$40 million. Cody Easterday was instrumental in
- 18 marketing excess feed crop inventories and helped generate
- 19 interest from numerous buyers for the benefit of the Debtors.
- 20 This was not an area of expertise of the Debtors' professionals,
- 21 but with Cody's help they were able to sell crop inventories to
- 22 numerous buyers and maximize value to the Estates.

23 Tyson's statement that Cody Easterday "is now actively seeking to thwart

24 creditor recoveries by steering tens of millions of dollars in disputed sale

25 proceeds to his mother and wife rather than to creditors" is false. Cody, Debby,

26 and Karen Easterday have always proposed to contribute the net sale proceeds

27 received from the sale of the Benton County, Washington real property assets to

28 creditors. In fact, the Easterday family submitted a settlement proposal to

29

30

31

32

1 interested parties in July 2021, which proposal would have liquidated all estate
 2 assets, significantly reduced ongoing administrative expenses, and still would
 3 have resulted in a greater recovery to creditors than the Plan that has now been
 4 filed. The Easterday proposal was rejected.
 5
 6
 7

8 **B. Tyson has no Claim in the Easterday Farms Case.**
 9

10 Ranches filed a petition for relief under Chapter 11 of the United States
 11 Bankruptcy Code on February 1, 2021. Farms filed a petition for relief under
 12 Chapter 11 on February 8, 2021. Farms and Ranches are two separate
 13 bankruptcy estates with different creditors and different assets. Tyson has filed
 14 a proof of claim in the Ranches case³. Tyson, however, did not file a proof of
 15 claim in the Farms case because Tyson did not do business with Farms and has
 16 no claim to any assets owned by Farms. The Tyson Objection attempts to
 17 lump all assets of both the Ranches and Farms estates together to the detriment
 18 of Farms' creditors without any right to do so.
 19
 20
 21
 22
 23
 24
 25
 26

27
 28 ³ The Easterdays dispute the amount of the Tyson proof of claim and believe it is significantly less than
 29 the amounts claimed. The restitution numbers included in the Plea Agreement were estimates based on
 30 information available to Cody Easterday in March, 2021. Those estimates did not consider numerous
 31 factors and potential setoffs that should reduce restitution, including (for example) Tyson's refusal to pay
 32 between \$9.5 million and \$12 million for feed. Based on subsequent (both pre- and post-petition)
 activities and transactions involving Tyson and the Debtors, Cody Easterday believes that the estimated
 restitution amounts are significantly overstated by between \$10-\$50 million and that any claim for
 restitution should and will be reduced accordingly.

1 As noted above, the sale of the Benton County real property assets
2 generated over \$204 million in sale proceeds. That sale has generated an
3 estimated **\$25 million** of capital gains taxes, which taxes are owed by Cody and
4 Debby Easterday. The Debtors and Tyson propose to leave those tax obligations
5 with Cody and Debby Easterday with no means or funds to pay such tax
6 obligations. Tyson's statements that the Easterdays are attempting to "steer"
7 proceeds to the family for some improper purpose are not true.
8
9
10
11
12

13
14 **C. The Allocation Litigation.**

15 On September 22, 2021, Debtors commenced an action⁴ against Cody
16 Easterday and the members of the Easterday family, seeking a declaratory
17 judgment that all of the real property that was sold belong to the Debtors and
18 not Cody Easterday or other Easterday family members. The Easterdays deny
19 the allegations of the complaint and have asserted affirmative defenses and
20 counterclaims.
21
22
23
24
25

26 There is no attempt to delay or otherwise move the trial date in the
27 Allocation Litigation. The Allocation Litigation was commenced by the
28 Debtors, not the Easterdays. The Easterdays are defending the Allocation
29
30
31

32 ⁴ Complaint (I) to Determine Validity, Priority, or Extent of Interests in Property and (II) for Declaratory Judgment, pending under Adv. Proc. 21-80050 (Bankr. E.D. Wash.).

1 Litigation and, of course, have every right to defend such claims. The
2
3 Easterdays have submitted a proposed scheduling order that modifies certain
4
5 discovery deadlines, but retains the scheduled trial date of April 18, 2022. A
6
7 copy of the proposed Revised Scheduling Order is attached as Exhibit A.

8 **D. The Motion to Continue.**
9

10 As pointed out in the Motion, the underlying facts related to the real
11
12 property assets are complex and involve the acquisition of close to 80 separate
13
14 parcels of real property over thirty years. There are only two people who had
15
16 specific knowledge of these transactions and acquisitions; Gale Easterday who
17
18 is now deceased, and Cody Easterday. The participation of Cody Easterday in
19
20 the adversary proceeding is critical. The Allocation Litigation is under an
21
22 expedited scheduling process and is set for trial on April 18, 2022.

23 As set forth in the Motion Cody Easterday is the only person who knows
24
25 and understands the details of the acquisitions, the ownership structure, and the
26
27 parties' intent with respect to the purchases. These determinations will be very
28
29 fact intensive and Cody Easterday's involvement on a daily basis is critical to
30
31 the ability to prepare a defense to the Allocation Litigation within the strict
32
timelines of the scheduling order with a proposed March 31, 2022, discovery

1 cut off for fact witnesses.

2
3 The determination of the rightful owner of these properties is significant to
4
5 Cody Easterday's continuing effort to preserve and obtain maximum values for
6
7 assets that will be available for the payment of creditors, including restitution
8
9 claimants. If Cody Easterday is not allowed to actively participate in the
10
11 defense of the Allocation Litigation, he and the Easterday family will be
12
13 prejudiced in attempting to defend the Allocation Litigation and seek a
14
15 determination as to the ownership of those properties and the right to distribute
16
17 those sale proceeds to the creditors entitled to them. Throughout the bankruptcy
18
19 proceedings Cody Easterday has consistently put the interests of the Debtors
20
21 and all creditors ahead of his own. At this time, he continues to seek to
22
23 maximize the recovery of creditors and also seeks the opportunity to participate
24
25 in his own and his family's defense.

26
27
28
29
30
31
32
RESPECTFULLY SUBMITTED this 5th day of January, 2022.

ETTER, McMAHON, LAMBERSON,
VAN WERT & ORESKOVICH, P.C.

By: /s/ Carl J. Oreskovich
CARL J. ORESKOVICH, WSBA #12779
Attorney for Defendant Easterday

CERTIFICATE OF SERVICE

I hereby certify that on the 5th day of January, 2022, I electronically filed the following documents:

Defendant's Response to Tyson's Motion to Continue Sentencing Hearing and Associated Deadlines

with the Clerk of the Court using the CM/ECF System, which will send notification of such filing to the following:

John Scanlon

john.scanlon@usdoj.gov

Elizabeth Lee

Elizabeth.Lee@waep.uscourts.gov

Alan D. Smith

ADSmith@perkinscoie.com

/s/Carl J. Oreskovich

CARL J. ORESKOVICH, WSBA 12779

ETTER, McMAHON, LAMBERSON,

VAN WERT & ORESKOVICH, P.C.

618 West Riverside Avenue, Suite 210

Spokane, WA 99201

(509)747-9100

(509)623-1439 Fax

Email: carl@ettermcmahon.com

Attorneys for Defendant Easterday